

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES PREVARD,

Defendant.

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Criminal No. 03-648 (SRC)

ORDER

This matter having come before the Court on Defendant’s Motion for early release, or for “maximum time allowed in the halfway house” pursuant to the Second Chance Act of 2007 [docket item # 20]; and

IT APPEARING that Defendant previously challenged the legality of his sentence under 28 U.S.C. § 2255, and the court denied Defendant’s petition to correct his sentence by way of an Opinion and Order dated January 31, 2007 [civil docket no. 05-6001, entry 16]; and it further

APPEARING that Defendant also moved for a reduction in the length of his sentence via letter dated March 15, 2012, which the Court denied by way of an Order dated March 19, 2012 [docket entry 19]; and it further

APPEARING that Federal Rule of Criminal Procedure 35, which governs the correction or reduction of a sentence, applied to the relief requested by Defendant in his previous motion, and applies to the within motion for “early release”; and it further

APPEARING that Rule 35(b) provides that the government may move for a reduction of sentence for substantial assistance provided by the defendant in investigating or prosecuting another person; and it further

APPEARING that Rule 35 does not contemplate motions for the reduction of a sentence filed by a defendant; and it further

APPEARING that Defendant therefore has no standing under Rule 35 to obtain the relief sought; and it further

APPEARING that, Defendant's request to be placed in the halfway house program for one year, rather than six months, was denied by his counselor in the Bureau of Prisons ("BOP"); and it further

APPEARING that the Court lacks jurisdiction to entertain Defendant's challenge to this decision, because the BOP has "nearly exclusive jurisdiction to classify and transfer prisoners," *Beckley v. Miner*, 125 Fed. Appx. 385, 389 (3d Cir. 2005), and Defendant has not demonstrated that the BOP lacked statutory authority to determine that Defendant was ineligible for the one-year halfway house program; and it further

APPEARING that

For the foregoing reasons, **IT IS** on this 18th day of May, 2012, hereby

ORDERED that Defendant's Motion for early release or maximum time in the halfway house [docket item # 20] be and hereby is **DENIED**.

s/ Stanley R. Chesler
Stanley R. Chesler, U.S.D.J.